

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ADAM PLAGENS,

Plaintiff,

v.

Case No. 06-12214

Hon. Sean F. Cox

SOURCE ONE MORTGAGE
CORPORATION, et al.

Defendants.

ORDER

This matter is before the Court on Third-Party Defendant Reginald Ellsworth's Motion to strike Third-Party Complaint.

On June 23, 2007, Plaintiff¹ filed a Third-Party Complaint, pursuant to Fed.R.Civ.P. bringing Third-Party Defendant Reginald Ellsworth in to this action. Plaintiff asserts Ellsworth is liable to Plaintiff on a counterclaim asserted against Plaintiff by Defendant Argent Mortgage Company.

On July 31, 2007, Third-Party Defendant, Ellsworth, filed the instant Motion to strike the Third-Party Complaint. Ellsworth argues that "[t]his court did not grant [Plaintiff] the right to file a claim against Reginald Ellsworth." [Motion, ¶2]. However, Plaintiff was not required to seek leave to file the Third-Party Complaint pursuant to Fed.R.Civ.P. 14(a), "[t]he third-party

¹Although Plaintiff is a Third-Party Plaintiff with respect to this claim, for convenience Plaintiff is referred to as Plaintiff.

plaintiff need not obtain leave to make the service if the third-party plaintiff files the third-party complaint not later than 10 days after serving the original answer.” Plaintiff filed his Answer to the Counterclaim and the Third-Party Complaint simultaneously, thus it was timely.

Third-Party Defendant does not offer any other basis to strike Plaintiff’s Complaint. Challenges to the merits and evidentiary support of Plaintiff’s claims are properly considered in a motion pursuant to Fed.R.Civ.P. 56.

Accordingly, Third-Party Defendant Reginald Ellsworth’s Motion to strike Third-Party Complaint is **DENIED**.

IT IS SO ORDERED.

S/Sean F. Cox

Sean F. Cox

United States District Judge

Dated: August 3, 2007

I hereby certify that a copy of the foregoing document was served upon counsel of record on August 3, 2007, by electronic and/or ordinary mail.

S/Jennifer Hernandez

Case Manager